

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN**

In Re:

**James Stephen Osieczonek
Karen Ruth Osieczonek**

Chapter 13

Case No: 13-23443-mdm

Debtors.

**James Stephen Osieczonek
Karen Ruth Osieczonek**

Adversary Case No:_____

Plaintiffs,

v.

Baytree National Bank & Trust Company

Defendant.

**COMPLAINT FOR DETERMINING THE VALIDITY OF
MORTGAGE LIEN OF BAYTREE NATIONAL BANK & TRUST COMPANY**

NOW COME, James Stephen Osieczonek and Karen Ruth Osieczonek (“Plaintiffs”), by and through their attorneys, Muskego Law Group by Attorney Angela M. Soltis for their claim against Baytree National Bank & Trust Company (“Defendant”) and allege as follows:

1. That Plaintiffs live at 1719 Center Road, Waukesha, Wisconsin, 53189. On March 25, 2013, Plaintiffs filed for relief under Chapter 13 of the Bankruptcy Code in the Eastern District of Wisconsin.

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2. Upon information and belief, Baytree National Bank & Trust Company, “Defendant” is a corporation whose principal office address is 664 North Western Avenue, Lake Forest, Illinois, 60045, said corporation being licensed to do business in the State of Wisconsin.

3. Plaintiffs are the owner of a home at 1719 Center Road, Waukesha, Wisconsin, 53189, that is their homestead. Based on a comparative market analysis performed in March 2013, Plaintiffs’ homestead has a total estimated fair market value of \$145,300.00 as set forth in the bankruptcy schedules filed herein and signed by Plaintiffs under penalty of perjury. A copy of this market analysis is attached hereto and labeled as Exhibit A.

4. Plaintiffs have a first mortgage encumbering their homestead with Wells Fargo. The approximate pay-off balance on that mortgage as of March 25, 2013 was \$159,430.00 as set forth in the bankruptcy schedules filed herein and signed by Plaintiffs under penalty of perjury.

5. Defendant holds a second mortgage of record that is junior to the first mortgage. The approximate pay-off balance on this mortgage was \$50,878.21 as set forth in the bankruptcy schedules filed herein and signed by Plaintiffs under penalty of perjury.

6. This is an action pursuant to 11 U.S.C. 1322(b) for determination of the status of said creditor’s lien. The Court has jurisdiction over this action pursuant to 28 U.S.C. Sec. 1334, and is a core proceeding.

7. Defendant is a wholly unsecured creditor herein 11 U.S.C. § 506(a).

8. Defendant’s mortgage is voidable 11 U.S.C. § 506(d).

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WHEREFORE, Plaintiffs request the Court enter judgment declaring that the claim of Defendant and of any successors in interest is wholly unsecured and declaring that the mortgage of Defendant, Baytree National Bank & Trust Company, and of any successors in interest is void upon issuance of a discharge to Plaintiffs, awarding Plaintiffs reasonable costs, disbursements and attorney fees and for such further relief as may be just and equitable.

Dated this 27th day of March, 2013

MUSKEGO LAW GROUP

/s/ Angela M. Soltis

Angela M. Soltis, Of Counsel
Attorney for Plaintiffs/Debtors

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